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OFFICIAL GAZETTE

GOVERNMENT OF GOA

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No. 2

GOVERNMENT OF GOA

Department of Finance

Office of the Commissioner of Commercial Taxes

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No. CCT/26-4/2022-23/F/1740

Subject: GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law – reg.

Circular

(No. 09/2022-23-GST)

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act. Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of Goa Goods and Services Tax Act, 2017 (hereinafter referred to as, "Goa GST Act") in this context has been examined in the following paragraphs.

2. "*Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of Goa GST Act if the same constitutes a "supply" within the meaning of the Act. The said expression has following three limbs:

a. Agreeing to the obligation to refrain from an act—

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

b. Agreeing to the obligation to tolerate an act or a situation—

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c. Agreeing to the obligation to do an act—

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

3. The description "***agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act***" was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

3.1. Some of the important examples of such cases are Service Tax/GST demands on–

i. Liquidated damages paid for breach of contract;

ii. Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;

iii. Cheque dishonour fine/penalty charged by a power distribution company from the customers;

iv. Penalty paid by a mining company to State Government for unaccounted stock of river bed material;

v. Bond amount recovered from an employee leaving the employment before the agreed period;

vi. Late payment charges collected by any service provider for late payment of bills;

vii. Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;

viii. Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

4. In Service Tax law, 'Service' was defined as any activity carried out by a person for another for consideration. As discussed in service tax education guide, the concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration'. The element of contractual relationship, where one supplies goods or services at the desire or another, is an essential element of supply.

5. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act in para 5 (e) of Schedule II of Goa GST Act is strikingly similar to the definition of contract in the Contract Act, 1872. The Contract Act defines 'Contract' as a set of promises, forming consideration for each other. 'Promise' has been defined as willingness of the 'promisor' to do or to abstain from doing anything. 'Consideration' has been defined in the Contract Act as what the 'promisee' does or abstains from doing for the promises made to him.

6. This goes to show that the service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In

other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand- alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Agreement to do or refrain from an act should not be presumed to exist

7. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments such as liquidated damages for breach of contract, penalties under the mining act for excess stock found with the mining company, forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act. Taxability of these transactions is discussed in greater detail in the following paragraphs.

Liquidated Damages

7.1 Breach or non-performance of contract by one party results in loss and damages to the other party. Therefore, the law provides in Section 73 of the Contract Act, 1972 that when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.

7.1.1 It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Such compensation specified in a written contract for breach of non-performance of the contract or parties of the contract is referred to as liquidated damages. Black's Law Dictionary defines 'Liquidated Damages' *as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party*.

7.1.2 Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

7.1.3 It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person. It is further argued that a contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the

liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

7.1.5 Examples of such cases are damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright, etc. Other examples that may be covered here are the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers. Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

7.1.6 If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered *de hors* an agreement/contract between two persons wherein one person does something for another and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. For example, a contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty. A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer. Similarly, a contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty. Some banks similarly charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.

Compensation for cancellation of coal blocks

7.2 In the year 2014, coal block/mine allocations were cancelled by the Hon'ble Supreme Court vide order dated 24-09-2014. Subsequently, Coal Mines (Special Provisions) Act, 2015 was enacted to provide for allocation of coal mines and vesting of rights, title and interest in and over the land and mines infrastructure together with mining leases to successful bidders and allottees. In accordance with Section 16 of the said Act, prior (old) allottee of mines were given compensation in the year 2016 towards

the transfer of their rights/titles in the land, mine infrastructure, geological reports, consents, approvals etc. to the new entity (successful bidder) as per the directions of Hon'ble Supreme Court.

7.2.1 There was no agreement between the prior allottees of coal blocks and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

Cheque dishonor fine/penalty

7.3 No supplier wants a cheque given to him to be dishonoured. It entails extra administrative cost to him and disruption of his routine activities and cash flow. The promise made by any supplier of goods or services is to make supply against payment within an agreed time (including the agreed permissible time with late payment) through a valid instrument. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

Penalty imposed for violation of laws

7.4 Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable, which are also not taxable. Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit. Such penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax education guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties.

7.4.1 It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13-04-2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also.

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything

in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Compensation for not collecting toll charges

8. In the wake of demonetization, NHAI directed the concessionaires (toll operators) to allow free access of toll roads to the users from 8-11-2016 to 1-12-2016 for which the loss of toll charge was paid as compensation by NHAI as per the instructions of Ministry of Road Transportation and Highways. The toll reimbursements were calculated based on the average monthly collection of toll. A question arose whether the compensation paid to the concessionaire by project authorities (NHAI) in lieu of suspension of toll collection during the demonetization period (from 8-11-2016 to 1-12-2016) was taxable as a service by way of agreeing to refrain from collection of toll from users.

8.1 It has been clarified vide Circular No. 212/2/2019-ST dated 21-05-2019 that the service that is provided by toll operators is that of access to a road or bridge, toll charges being merely a consideration for that service. During the period from 8-11-2016 to 1-12-2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

Late payment surcharge or fee

9. The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc. Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonor fine or penalty as discussed in the preceding paragraphs.

Fixed capacity charges for power

10. The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The minimum fixed charges have to be paid by the SEBs/DISCOMS/individual customers irrespective of the quantity of electricity scheduled or purchased by them during a month. They take care of the fixed cost of generating/ /supplying electricity. The variable charges are charged per unit of electricity purchased and increase or decrease every month depending on the quantity of electricity consumed.

10.1 The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

10.2 Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST. Power purchase agreements may have provisions that the power producer shall not supply electricity to a third party without approval of buyer. Such agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements; the contract is essentially for supply of electricity.

Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or

forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

12. Field formations are advised that while the taxability in each case shall depend on facts of that case, the above guidelines may be followed in determining whether tax on an activity or transaction needs to be paid treating the same as service by way of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

19. Difficulties, if any, in implementation of this circular may be brought to the notice of the undersigned.

Ruchika Katyal, IAS, Commissioner of State Taxes, Goa.
Panaji, September, 2022.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the Tax Research Unit, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 178/10/2022-GST dated 03rd August, 2022.

No. CCT/26-4/2022-23/F/1741

Subject: Clarification regarding applicable GST rates & exemptions on certain services–reg.

Circular

(No. 08/2022-23-GST)

Representations have been received seeking clarification on the following issues:

1. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01-07-2017 to 05-10-2021;
2. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions;
3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18-07-2022;
4. Whether exemption under Sl. No. 9B of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 covers services associated with transit cargo both to and from Nepal and Bhutan;
5. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments;
6. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%;
7. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time;
8. Whether location charges or Preferential Location Charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment;
9. Applicability of GST on payment of honorarium to the Guest Anchors;
10. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST;
11. Applicability of GST on services in the form of Assisted Reproductive Technology (ART)/In Vitro Fertilization (IVF);
12. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST;
13. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers;
14. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) transport of passengers by non-air conditioned contract carriage;
15. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18-07-2022;
16. Applicability of GST on tickets of private ferry used for passenger transportation.

2. The issues have been examined by GST Council in the 47th meeting held on 28th and 29th June, 2022. The issue-wise clarifications as recommended by the GST Council are below.

3. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01-07-2017 to 05-10-2021.

3.1 On the recommendation of the GST Council in its 45th meeting, it was clarified vide circular No. 17/2021-22-GST dated 28-11-2021 that ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence, ice cream sold by a parlour or any similar outlet attracts standard rate of GST @ 18% with ITC.

3.2 Representations have been received requesting that GST at 18% may be levied on supply of ice-cream by ice-cream parlors with effect from 06-10-2021.

3.3 It has been represented that ice cream parlors which paid GST @ 5% without ITC in view of prevailing doubt before the issuance of the Circular dated 28-11-2021 did not avail ITC and paid 5% in cash. Such ice-cream parlors have thus foregone significant ITC benefit.

3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6-10-2021, the ice cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

4. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

4.1 Representations have been received regarding applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions.

4.2 In this regard, it is stated that educational services supplied by educational institutions to its students are exempt from GST vide entry 66 of the Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 relevant portion of which reads as under:-

"Services provided:–

a. by an educational institution to its students, faculty and staff;

[(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]..."

4.3 Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt.

4.4 Accordingly, it is clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is covered by exemption under Sl. No. 66 of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017.

5. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18-07-2022.

5.1 Representations have been received regarding applicability of GST exemption on the service of storage or warehousing of cotton in baled or ginned form.

5.2 Prior to 18-07-2022, entry 24B of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 exempted services by way of storage and warehousing of, inter alia, raw vegetable fibers such as cotton, flax, jute etc. Cotton Fiber glossary by **barnhardtcotton.net** defines 'cotton staple, virgin cotton or raw cotton' as cotton fibers that are removed from the cotton seed by the gin. Further, CESTAT Chandigarh in the case of R. K. & Sons vs CCE, Rohtak dated 14th July, 2016 has observed as under:

"Cotton (with seeds) as plucked from cotton plants can hardly be called cotton fibre in which case cotton fibre would come into existence only after the seeds are ginned away from cotton plucked from cotton plants. Cotton fibre obtained by ginning cotton plucked cotton plants is nothing but raw cotton fibre because there cannot be rawer form of cotton fibre obtained from cotton-with-seeds plucked from cotton plants."

5.3 Accordingly, it is clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f 18-07-2022.

6. Whether exemption under Sl. No. 9B of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 covers services associated with transit cargo both to and from Nepal and Bhutan.

6.1 Representations have been received regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo to India.

6.2 GST on supply of services associated with transit cargo to Nepal and Bhutan was exempted w.e.f. 29-09-2017 based on recommendations of the 20th GST Council Meeting. The opening sentence of the Agenda Item 7(ix) placed before the GST Council on this issue, makes it clear that the proposal was to exempt supply of services associated with transit cargo both to and from Nepal and Bhutan.

6.3 Accordingly, as recommended by the GST Council, it is clarified that exemption under Sl. No. 9B of Notification 38/1/2017-Fin(R&C)(12/2017-Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

6.4 It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.

6.5 Needless to say that the cargo has to be transshipped/transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan. Under the regulations/procedures, the container number, which is a unique alpha numeric identifier for the container, is declared. Further, the Customs broker/shipping line/carrier is responsible for making available a track and trace facility for locating goods brought for transhipment.

6.6 With respect to transit or transhipment of cargo to Nepal, specific regulations namely Transhipment of Cargo to Nepal under Electronic Cargo Tracking System Regulations, 2019 have been notified. It is relevant to mention here that as per these regulations also, the authorized carrier has to execute a general bond for an amount as directed by the proper officer. The authorized carrier also has to procure ECTS (Electronic Cargo Tracking System) from a bi-laterally appointed managed service provider. In order to discharge the bond, the proper officer of customs has to extract trip reports from the ECTS web application as proof of completion of transhipment. The reconciliation of transhipment of consignments shall be carried out on the basis of trip report, by the proper officer at the Ports of Kolkata, Haldia or Visakhapatnam, as the case may be, and then only the general bond submitted by the authorised carrier will be re-credited or discharged.

6.7 As can be seen from the above, the regulations governing transit/transhipment have to be followed in addition to the ensuring that an electronic track and trace facility is in place. This facility uses container numbers to locate the cargo. Thus, it is verifiable that the empty container returning from Nepal or Bhutan is the same container which was used to deliver goods to Nepal or Bhutan.

7. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments.

7.1 Representations have been received regarding taxability of sanitation and conservancy services supplied to Army and other Central and State Government departments.

7.2 Municipalities and Panchayats and other local authorities such as Cantonment Boards listed in Section 2(69) of the Goa Goods and Services Tax Act, 2017 carry out functions entrusted to them under articles 243W & 243G of the Constitution respectively. Functions that may be entrusted to Panchayats and Municipalities are listed in Schedule 11 & 12 of the Constitution. Central Government, State Governments & Union Territories also perform functions listed in Schedule 11 & 12 such as irrigation, public health etc.

7.3 Services by Central Government, State Government, Union Territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the constitution have been declared as 'neither a supply of goods nor a supply of service' vide Notification No. 38/1/2017-Fin(R&C)(14/2017-Rate) dated 30-06-2017.

7.4 The exemption under entry 3 & 3A of Notification 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 has been given on pure services & composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th schedule of the constitution.

7.5 It is clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 38/1/2017-Fin(R&C)(12/2017-Rate).

8. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%.

8.1 Representation has been received regarding the GST rate applicable on selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc.

8.2 As per serial number (i) of entry 21 of Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) dated 30-06-2017 selling of space for advertisement in print media attracts GST @ 5%. The term 'print media' has been defined in clause (zt) of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 as under:

"print media" means:—

i. 'book' as defined in sub-section (1) of Section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

ii. ....

8.3 Further, sub-section (1) of Section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows:

"Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

8.4 It therefore appears that 'book' has been defined in the Press and Registration of Books Act, 1867 in an inclusive manner with a wide ambit which would cover souvenir book also.

8.5 Accordingly, as recommended by the GST Council, it is clarified sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) and attracts GST @ 5%.

9. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time.

9.1 Representations have been received to clarify the taxability of transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time and whether the same would be covered under Sr. No. 18 of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 which exempts transport of goods by road except by a GTA.

9.2 Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.

9.3 Such services are nothing but "rental services of transport vehicles with operator" which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of Notification No. 38/1/2017--Fin(R&C)(11/2017-Rate) dated 30-06-2017. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.

9.4 Accordingly, as recommended by the GST Council, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017. On such rental services of goods carriages where the cost of fuel is in included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18-07-2022. Prior to 18-07-2022, it attracted GST at the rate of 18%.

10. Whether location charges or Preferential Location Charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment.

10.1 Representation has been received seeking clarification whether location charges or Preferential Location Charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or upfront amount charged for long term lease of land and are eligible for the same tax treatment.

10.2 As per entry 41 of the Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 upfront amount, which is defined as "upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area", is exempt from GST.

10.3 Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.

10.4 Accordingly, as per recommendation of the GST Council, it is clarified that location charges or Preferential Location Charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of Notification No. 38/1/2017--Fin(R&C)(12/2017-Rate) dated 30-06-2017.

11. Applicability of GST on payment of honorarium to the Guest Anchors

11.1 Representation has been received regarding applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors for participating in their shows and pays remuneration to them in the form of honorarium. Some of the guest anchors have requested payment of GST @ 18% on the honorarium paid to them for such appearances.

11.2 It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs. 20 lakhs (Rs. 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.

12. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST

12.1 Representation has been received regarding taxability of additional toll fees collected by the Concessionaires from the vehicles which is not having fastag.

12.2 Entry 23 of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30th June, 2017 exempts service by way of access to a road or a bridge on payment of toll charges.

12.3 Ministry of Road Transport & Highways (MORTH) vide circular dated 16-02-2021 has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional fastag.

12.4 Essentially, the additional amount collected from the users of the road not having a functional fastag, is in the nature of toll charges and should be treated as additional toll charges.

12.5 On a similar issue of collection of overloading charges in the form of a higher toll (2/4/6/7 times of the base rate of toll), it has already been clarified vide circular number 17/2021-22-GST dated 28-11-2021, which was issued on the basis of recommendation of GST Council that overloading charges at toll plazas would get the same treatment as given to toll charges.

12.6 Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

13. Applicability of GST on services in form of Assisted Reproductive Technology (ART)/In Vitro Fertilization (IVF)

13.1 Representations have been received to clarify whether GST is applicable on services by way of Assisted Reproductive Technology (ART) procedures such as In Vitro Fertilization (IVF).

13.2 Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt. [Sl. No. 74 of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017].

13.3 Health care services is defined vide 2(zg) of the Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 as –

"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma."

13.4 The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

14. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST.

14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.

14.2 As per Sl No. (5) of Schedule III of the Goa Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Goa Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

15. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers:

15.1 In case of services provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, tax is required to be paid by the body corporate under RCM.

15.2 Representations have been received to clarify whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966).

15.2 Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is renting of motor vehicle for transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

15.4 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules.

15.5 Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.

15.6 Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge

thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

15.7 However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

16. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) transport of passengers by non-air conditioned contract carriage.

16.1 Representations have been received to clarify whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017.

16.2 Sr. No. 15 (b) of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 exempts *"transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, for transport of passengers, excluding tourism, conducted tour, charter or hire."*

16.3 It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

16.4 In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

17. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18-07-2022.

17.1 Representation has been received seeking clarification regarding the applicable GST rate on service of construction, supply, installation and commissioning of a 2.00 LLPD dairy plant on turn-key basis.

17.2 In case of a turn key project for construction, supply, installation and commissioning of a 2.00 LLPD dairy plant, it has been held by Advance Ruling Authorities of Bihar and Gujarat that the same does not result into an immovable property and is therefore not a supply of works contract. This being so, such supply is not eligible for concessional rate of 12% applicable on works contract supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

17.3 In this regard, it may be seen that prior to 18-07-2022 serial number 3(v)(f) of Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) dated 30-06-2017 prescribes GST rate of 12% on the composite supply of works contract by way of construction, erection, commissioning, or installation of original works pertaining to *mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.*

17.4 It is clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property.

17.5 It is also clarified that such works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) dated 30-06-2017 prior to 18-07-2022. With effect from 18-07-2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in Notification No. 38/1/2017-Fin(R&C)(11/2017-Rate) vide Notification No. 38/1/2017-Fin(R&C)(03/2022-Rate).

18. Applicability of GST on tickets of private ferry used for passenger transportation.

18.1 Representations have been received seeking clarification on applicability of GST on private ferry tickets. It has been stated that these private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands.

18.2 As per Sl. No 17(d) of Notification No. 38/1/2017-Fin(R&C)(12/2017-Rate) dated 30-06-2017 ***"transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India"*** is exempted.

18.3 It is clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/Government.

18.4 It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

19. Difficulties, if any, in implementation of this circular may be brought to the notice of the undersigned.

Ruchika Katyal, IAS, Commissioner of State Taxes, Goa.
Panaji, 14th September, 2022.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the Tax Research Unit, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 177/09/2022-GST dated 03rd August, 2022.

No. CCT/26-4/2022-23/F/1742

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on the 28th–29th June, 2022 at Chandigarh–reg.

Circular

(No. 10/2022-23-GST)

Based on the recommendations of the GST Council in its 47th meeting held on 28th–29th June at Chandigarh, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5%:

2.1 Representations have been received seeking clarification regarding the applicable rate of GST on electrically operated vehicle without any battery fitted to it.

2.2 The explanation of 'Electrically operated vehicles' in entry 242A of Schedule I of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) reads as: 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

2.3 As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

24. It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

2.5 Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in heading 87.06.

2.6 In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate).

3. Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry:

3.1 Representations have been received seeking clarification regarding the applicable GST rates on building stones, in particular Napa Stones, which are ready to use and polished in ways other than mirror-polished.

3.2 Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for 'Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use. However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.

3.3 Therefore, it is clarified that S. No. 123 in schedule-I to the Notification No. 38/1/2017--Fin(R&C)(1/2017-Rate) dated the 30-06-2017 covers minor polished stones.

4. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate:

4.1 Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.

4.2 On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate), dated the 30th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under heading 0804, including mango pulp, was always meant to be at the rate of 12%.

4.3 Accordingly, it is hereby clarified that mangoes, fresh falling under heading 0804 are exempt; mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant entry at S. No. 16 of Schedule-II of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated the 30th June, 2017, has been amended *vide* Notification No. 38/1/2017-Fin(R&C)(06/2022-Rate) dated the 16th July, 2022.

4.4 Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of Notification No. 38/1/2017-Fin(R&C)(2/2017-Rate) dated the 30th June, 2017].

5. Treated sewage water attracts Nil rate of GST:

5.1 Representations have been received seeking clarification regarding the applicable GST rate on treated sewage water. Treated sewage water was not meant to be construed as falling under "purified" water for the purpose of levy of GST.

5.2 In general, water, falling under heading 2201, with certain specified exclusions, is exempt from GST *vide* entry at S. No. 99 of Notification No. 38/1/2017-Fin(R&C)(2/2017-Rate) dated the 30th June, 2017.

5.3 Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry *vide* Notification No. 38/1/2017-Fin(R&C)(07/2022-Rate) dated the 16th July, 2022.

6. Nicotine Polacrilex Gum attracts a GST rate of 18%:

6.1 Representations have been received seeking clarification regarding the classification and applicable GST rate on Nicotine Polacrilex gum.

6.2 The WCO 2022 HS Codes has inter alia introduced a new entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 01-01-2022. Accordingly, a technical change, without any consequential rate change, has been made

vide Notification No. 38/1/2017-Fin(R&C)(18/2021-Rate)/3213 dated the 31st December, 2021, wherein S. No. 26B in Schedule III of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated the 30th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under tariff item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.

6.3 Accordingly, it is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated the 30th June, 2017].

7. Fly ash bricks and aggregate-condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks:

7.1 Representations have been received seeking clarification regarding the applicable rate on the fly ash bricks and fly ash aggregates.

7.2 Hitherto, as per entry at S. No. 176B of the Schedule II the items of description "Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks" attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

7.3 Therefore, it is clarified that the condition of 90 per cent. or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

8. Applicability of GST on by-products of milling of dal/pulses such as Chilka, Khanda and Churi:

8.1 Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of dal/pulses such as Chilka, Khanda and Churi.

8.2 The by-products of milling of pulses/dal such as Chilka, Khanda *and* Churi are appropriately classifiable under heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

8.3 The applicable GST rate on goods falling under heading 2302 is detailed in the Table below:

Entry and Notification No.	Description	GST Rate
S. No. 102 of notification No. 38/1/2017-Fin(R&C)(2/2017-Rate) dated the 30th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake [other than rice bran]	Nil
S. No. 103A of Schedule-I of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule-I of notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30th June, 2017	Rice bran (other than de-oiled rice bran)	5%

8.4 The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of Notification No. 38/1/2017-Fin(R&C)(2/2017-Rate) dated 30th June, 2017 or are otherwise not meant for direct consumption and thus covered under S. No. 103A of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated 30th June, 2017 attracting a GST rate of 5%.

8.5 While milling of pulses/dal, a wide range of by-products such as ***chilka, khanda, churi***, among others, are obtained which are preferred as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). Further, as per the Indian Standards 2052:2009 -Compounded Feeds for Cattle — Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

8.6 The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

8.7 Accordingly, it is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% *vide* S. No. 103A of Schedule-I of Notification No. 38/1/2017-Fin(R&C)(1/2017-Rate) dated the 30th June, 2017 and that for the past, the matter would be regularized on as is basis as mentioned in para 8.6.

9. Difficulties, if any, in implementation of this circular may be brought to the notice of the undersigned.

Ruchika Katyal, IAS, Commissioner of State Taxes, Goa.
Panaji, 14th September, 2022.

Note: Similar circular is issued under Central Goods and Services Tax Act, 2017 by the Tax Research Unit, Department of Revenue, Ministry of Finance, GOI, New Delhi vide Circular No. 179/11/2022-GST dated 03rd August, 2022.

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